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DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT
The Director General

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Kalina Dmitriew,
1 Long Ln
London
United Kingdom

***By registered email with
acknowledgment of receipt:***
[ask+request-11650-
82644b71@asktheeu.org](mailto:ask+request-11650-82644b71@asktheeu.org)

Dear Ms. Dmitriew,

Subject: Your application for access to documents – GESTDEM 2022/4335

We refer to your e-mail dated 28 July 2022 in which you make a request for access to documents, registered on the same date under the above mentioned reference number, as well as to our holding reply dated 19 August 2022.

You request access to the following documents:

“All documentation, including, but not limited to, attendance lists, agendas, background papers, minutes/notes and email correspondence about or summarising, the following meetings of Director-General Henrik Hololei and DG MOVE and their cabinet with multiple organisations:

1. Meeting with Verband der Automobilindustrie (VDA) on 15/06/2022 about the situation of automotive industry and Fit for 55.

(...)”.

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of different units of the Directorate-General for Mobility and Transport (DG MOVE), your request has been attributed to multiple units¹. This reply relates only to the documents concerning the meeting listed above. You will receive the replies from the other units of DG MOVE in due course.

¹ In particular, the request registered under the reference number GESTDEM 2022/4336, which concerns the “*Meeting with Airbus on 14/06/2022 about SAF*” and the “*Meeting with Lufthansa Group (LHG) on 25/05/2022 about Fit for 55*”.

I consider your request to cover documents held up to the date of your initial application, i.e. 28 July 2022.

We have identified the following documents as falling within the scope of your application:

- **Annex 1:** Briefing for the meeting between the Director-General of DG MOVE and the German Association of the Automotive Industry (VDA), to be held on 15 June 2022;
- **Annex 2:** Report of the meeting between the Director-General of DG MOVE and the German Association of the Automotive Industry (VDA), held on 15 June 2022.

Concerning the documents listed above, we have come to the conclusion that they may be partially disclosed. First, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereinafter ‘Regulation (EC) No 1049/2001’), because they contain the following personal data:

- the names and contact information of Commission staff members not pertaining to the senior management;
- the names and contact details of other natural persons;
- other information relating to identified or identifiable natural persons, in particular references to their functions, to the extent that these would enable their identification.

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC³ (hereinafter ‘Regulation (EU) 2018/1725’, or ‘Data Protection Regulation’).

In particular, Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data⁴.

² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.05.2001, p. 43.

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OC L 205 of 21.11.2018, p. 39).

⁴ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶.

In your application, you indicate that your address is in the United Kingdom. Transfers of personal data from the Commission to countries that are not members of the European Economic Area (EEA) are regulated under Chapter V of the Data Protection Regulation.

According to Article 47(1) of this Regulation, a transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection and where the personal data are transferred solely to allow tasks within the competence of the controller to be carried out.

Based on the information available, the country of your residence is recognised by the Commission as ensuring an adequate level of protection. However, we would further like to inform you that pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful handling, in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of the Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *Commission v Bavarian Lager*, ECLI:EU:C:2010:378, paragraph 63.

⁶ Whereas this judgment specifically related to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, the principles set out therein are also applicable under the new data protection regime established by Regulation (EU) 2018/1725.

that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access therefore a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

As regards **Annex 1**, a complete disclosure is also prevented by the exceptions to the right of access laid down in the first indent of Article 4(2) and in the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

First, Article 4(2), first indent of Regulation (EC) No 1049/2001 provides that “*The institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property (...), unless there is an overriding public interest in disclosure*”.

Indeed, a redacted part of this document contains commercially sensitive information on the deployment of electric vehicles which, if made public, could affect the commercial position of certain car manufacturers in the market, being therefore liable to undermine the achievement of their commercial purposes and objectives.

Therefore, the exception laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001 applies to a redacted part of **Annex 1**.

Second, the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 sets out that “*Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure*”.

Indeed, the disclosure of certain redacted parts of the document at this moment in time would seriously jeopardise the decision-making process of the Commission even after the adoption of the decisions, as they contain preliminary views and opinions for internal use as part of consultations within the Commission; as the legislative procedures concerning these proposals are still ongoing, the Union institutions must be free to explore all possible options in preparation of their decisions free from external pressure. In addition, the disclosure of such opinions could deter staff from formulating them independently, and without being unduly influenced by the prospect of wide disclosure exposing the institution of which they are part. It is to be noted that the possibility of expressing views independently within the institution is necessary to encourage internal discussions with a view to improving the functioning of the Commission, as well as to contribute to the smooth running of its decision-making process⁷.

Therefore, the exception laid down in the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 applies to redacted parts of **Annex 1** as well.

⁷ Judgment of the General Court of 15 September 2016, Case T-18/15 - *Philip Morris v Commission*, ECLI:EU:T:2016:487, paragraph 87.

The exceptions laid down in Article 4(2) and (3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in the disclosure of the documents. We have examined whether there could be overriding public interests in the disclosure of the redacted parts of the document in question. However, we have not been able to identify such interests.

Please note that the disclosed briefing and meeting report were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Mobility and Transport. They solely reflect the authors' interpretation of the interventions made, and do not set out any official position of the third parties to which the documents refer. They also do not reflect the position of the Commission, and cannot be quoted as such.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to submit a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Brussels,
or by email to: sg-acc-doc@ec.europa.eu

Finally, we kindly ask you to confirm receipt of this email.

Yours Sincerely,

Henrik HOLOLEI

Enclosure: 2 Annexes